

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 864 of 1995

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GUJARAT ELECTRICITY BOARD
VERSUS
M/S. CHANDRAKANTA DYEING AND PRINTING MILLS.

Appearance:

MS MAYA DESAI for the Petitioners
MR RR MARSHALL for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 16/03/2000

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. In a matter of temporary injunction more so where a consumer of electricity committed theft of electricity, the grant thereof may not be as a matter of rule or right. A supplementary bill for a sum of Rs.16,66,565-99 was served upon the plaintiffrespondent on 4-3-1993. The plaintiff- respondent instituted a suit being regular civil suit No.226 of 1993 in the court of Civil Judge (S.D.) at Surat for declaration and injunction. Prayer has been made for declaration that checking carried out by the officer of the petitionerBoard on 2-3-1993, the kabulatnama got executed, the panchnama recorded were all false and no recovery could be made of the amount of the supplementary bill issued on the strength of such checking and that it may be declared that the action of the respondent - Board to disconnect the power supply of the petitioner is not proper. Prayer has been made for injunction and for restoration of the disconnected power supply. Prayer has also been made for grant of interim relief by filing an application Ex. 5. After hearing the learned counsel for the parties, this application was allowed and the petitioners were directed to reinstall and reconnect immediately the plaintiffrespondent's entire HT installation and connection for electric supply bearing Consumer No.060 and running in the name of Gulshan Garden Silk Mills and not to disconnect the same till the final disposal of the suit on the condition of depositing of 30% of the bill amount by the plaintiffrespondent within one month from the date of the order. The defendants- petitioners have not challenged this order of the trial court for the reasons best known to them. However, the plaintiff felt aggrieved of this order and filed an appeal and the appellate court has held that the order of the trial court calls for the modification and the 30% of the supplementary bill amount deposit order was reduced to 20% thereof. Hence, this revision application.

3. Having heard the learned counsel for the parties, I am satisfied that the orders passed by both the courts below are not just and reasonable. It is a matter of theft of electricity by the plaintiff respondent and on detection of same, rightly the board has issued supplementary bill. It is true in case against this demand, appeal as provided by the Board, is filed by the plaintiff- respondent then on depositing of 30% of demanded amount, the electricity connection of it could have been restored by the Board. The plaintiff respondent has not gone for this remedy. Remedy chosen by the plaintiff - respondent is to file the civil suit and where in the matter of grant of interim relief

different considerations are to be taken, the courts below have misled themselves and under misconception of law considered that even in the suit filed by such category of consumers of electricity Board are to be protected in the line and way and condition as what it is available to them where they have chosen to file the appeal before the appellate authority. That is not the law nor it is the decision of the court. The plaintiff petitioner has chosen this remedy and the court has to pass order in accordance with law and as it is a matter of demand of electricity consumption charges, a money matter, no question does arise to grant any interim relief in his favour as nongrant thereof will not cause any irreparable injury, which cannot be compensated in terms of money to the plaintiff respondent. In case of his success in the suit, he will get everything but not by way of interim relief. I fail to see any justification in the approach of both the courts below to go on the merits of the matter to the extent as if where they have to decide the matter finally. This is what precisely the appellate court did. The plaintiff respondent was directed to deposit 20% of the demanded amount and to avail of the remedy before the appellate committee. Whether the remedy of appeal is availed of or not by the plaintiff - respondent it is not known to its counsel. Once this direction has been given then I fail to see what for the appellate court allowed to continue the suit on the file of the trial court filed by the plaintiff - respondent. After the decision in the appeal it may have separate cause of action but this suit does not survive. The order of the appellate court is as under:

The appeal is partly allowed.

The appellant is directed to apply before the Appellate Committee of the respondent Board under Section 34 of the Electricity Act within one month from the date of this order.

The appellant is further directed to deposit additional five per cent amount of the disputed bill within 15 fifteen days from the date of this order, in his account with the respondent Board.

In default of the above conditions, the respondent Board shall be at liberty to disconnect the electric supply of the appellant. Subject to above compliance, the respondent Board is hereby directed not to disconnect the

appellant's electric connection.

Costs to be costs in the cause.

4. This relaxation which has been given or modification made in the trial court's order is wholly unjustified and arbitrary. Once the appellate court considered that the plaintiff- respondent has to go to appellate forum as what it is provided under the terms and conditions of the Board, no interim relief is to be granted. The order of first appellate court is absolutely perverse. It is different matter that the Board has not challenged the order of the trial court otherwise the court would have ordered for depositing of the whole amount of the bill by the respondent. Be that as it may. The order of the first appellate court cannot be allowed to stand. In case it is allowed to stand, it will occasion failure of justice to the petitioner and will cause irreparable injury to it. In case where the plaintiff respondent would have approached directly to the appellate authority it has to deposit 30% of the demanded amount for this relief to be availed of. This order, what the learned counsel for the petitioners contended, is contrary to the provisions of the Board's conditions under which appeal is provided.

5. As a result of the aforesaid discussion, this revision applications succeeds and the same is allowed and the order of the Extra Assistant Judge, Surat dated 23rd April, 1993 is quashed and set aside. Rule is made absolute accordingly. The plaintiff- respondent is directed to pay Rs.1000/= as costs of this revision application to the petitioners.

zgs/-